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FILED

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SECRETARY, BOARD OF
OIL, GAS & MINING

Attorneys for the Division of Oil, Gas and Mining

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

In the Matter of the Notice of Agency Action to affect the mining operations of **NEPHI SANDSTONE CORPORATION** by (1) withdrawing a Notice of Intention, (2) forfeiting a surety bond by **TRAVELERS CASUALTY AND INSURANCE COMPANY OF AMERICA** (3) ordering reclamation of mines, and (4) requesting the Division of Oil, Gas and Mining and the Attorney General to take all other actions necessary to recover costs and fees for the operations occurring at Cedar Springs (M/023/0059) located at Southeast ¼ of Section 15, Township 16 South, Range 1 West, Salt Lake Meridian in Juab County in Utah.

NOTICE OF AGENCY ACTION

Docket No. 2014-043

Cause No. M/023/0059

The Division of Oil, Gas and Mining (**Division**) submits this Notice of Agency Action to ask for the forfeiture of a surety to properly reclaim a mine as the Mined Land Reclamation Act

requires as well as a request for the Division and the Attorney General to pursue collecting \$2500 in outstanding annual fees.

Introduction

The Cedar Springs mine (M/023/059) lies in eastern Juab County and was used to mine Gypsum in the late nineties, although it probably was used long before that. The operator of the mine, Nephi Sandstone Corporation, initially obtained approval for a small mine and later submitted a Notice of Intention for a Large Mining Operation (**LMO**) when the disturbance increased to seven acres. The Division granted approval of the LMO in 2004. Nephi Sandstone also provided a \$30,000 surety bond and a reclamation contract.

Despite Nephi Sandstone's application for the permission to mine, it has not actively mined at this location since at least 2000 because of various economic and legal reasons. Nephi Sandstone has also reclaimed parts of the mine over the years. However, the operator has neither terminated the LMO nor paid the applicable permit fees for continued operation. There are still \$2500 in outstanding fees and a few parts of the mine require reclamation work—a slope needs to be pushed down to allow revegetation and the pad needs more work to promote revegetation.

The Division attempted, through multiple directives over multiple years, to bring the operator into compliance, but Nephi Sandstone failed to take the required reclamation actions. In a final effort to spur action, the Division ordered reclamation in a cessation order. Nephi Sandstone did not comply. Therefore, the Division must seek forfeiture to ensure the mine is finally reclaimed.

Jurisdiction

1. The Division brings this matter to the Board under the Utah Mined Land Reclamation Act (the “Act”), Utah Code §§ 40-8-1 to -23. The Act gives the Board and Division “jurisdiction and authority over all persons and property, both public and private, necessary to enforce this chapter.” Id. § 40-8-5(1)(a). The Act also gives the Board the power and the duty to hold hearings and issue orders based on those hearings and “[t]o do all other things and take such other actions within the purposes of this act as may be necessary to enforce its provisions.” Id. § 40-8-6(2), (4).

2. Pursuant to the Rules of the Board, unless otherwise ordered, this matter will be heard at the regularly scheduled a Board Hearing on December 10, 2014, in the auditorium of the Department of Natural Resources building at 1594 West North Temple, Salt Lake City, Utah. The hearing is scheduled to begin at 9:00 A.M. to hear pending requests and notices of agency action.

3. This proceeding is to be conducted formally according to the provisions of the Board’s administrative rules found in Utah Administrative Code Rule R641 and sections 63G-4-204 through 63G-4-209 of the Utah Code.

4. This proceeding may affect property interests of the permitted operators, the mineral owners, the surface landowners, the surety, and other named individuals. Each are “respondents” as defined under Utah Administrative Code Rule R641-100-200. The respondents must “file and serve a written response signed by the respondent or his/her repetitive with[in] twenty (20) days of the mailing date” of this Notice of Agency Action. Utah Admin. Code

R. R641-104-141 (2012). Under administrative rules R641-104-131.600 and R641-104-151, a party who fails to file a response or attend or participate in the hearing may be held in default.

General Allegations

5. Nephi Sandstone Corp. is a corporation formed and registered in Utah on February 16, 1988. Its registered agent is Craig J. Dansie at 1250 North 200 West, Nephi, Utah 84648. Mr. Dansie is the president of the corporation. Since 1999, the Division has worked with Bruce Evans, the company's treasurer, about its mining operations.

6. Cedar Springs Ranch is a corporation formed and registered in Utah on June 4, 1971. Its registered address is 29 South Main, P.O. Box 895, Brigham City, Utah 84302. The corporation's Registered Agent is Dale M. Dorius at 29 S. Main, P. O. Box 895, Brigham City, Utah 84302.

7. Travelers Casualty and Surety Company of America (**Travelers**) is the holder of the surety bond and is located at 1100 East 6600 South, Suite 500, Salt Lake City, Utah 84121. Its headquarters are at One Tower Square, Hartford, Connecticut 06183, and its registered agent in Utah is Corporation Service Company, 10 East South Temple, Suite 850, Salt Lake City, Utah 84133.

8. The history of the individual mining operations and violations are set forth separately in the following specific allegations.

Specific Allegations

A. History of the Cedar Springs mine

9. The Cedar Springs mine lies in eastern Juab County in the Southeast ¼ of Section 15, Township 16 South, Range 1 West, Salt Lake Meridian, Utah.

10. According to the submitted LMO and later inspection reports, the total disturbed area was seven acres at its largest. Also, according to the submitted LMO, the surface owners are Cedar Springs Ranch and Dale Dorius, both located at P.O. Box 895, Brigham City, Utah 84302, and the mineral owners of record are DE Industries at P.O. Box 137, Nephi, Utah 84648.

11. In 1998, the Division approved a Notice of Intention to Commence Small Mining Operations. A year later, in 1999, the Division discovered the current disturbed area was seven acres.

12. Soon thereafter, Nephi Sandstone provided a \$30,000 surety and a reclamation contract. Eventually Nephi Sandstone chose to file its LMO, which the Division approved in 2004 for a mine site that was now 5.9 acres. With that LMO, Nephi Sandstone entered into a reclamation contract with the Division, and Nephi Sandstone created a \$30,000 surety bond (No. 103926894) with Travelers for reclamation costs associated with the disturbed 5.9 acres.

13. Nephi Sandstone regularly filed its annual reports in 1999, 2000, 2001, 2002, 2003, 2004, and 2005. After 2005, the Division has no records of any annual reports from Nephi Sandstone for the Cedar Springs mine. Every filed annual report after 2000 indicates that mining activity stopped in 1999.

14. Nephi Sandstone regularly paid its annual permit fees until 2009. It failed to pay the annual fees in 2009, 2010, 2012, 2013, and 2014. The current outstanding balance is \$2500.

15. In the summer of 2011, the Division directed Nephi Sandstone to perform reclamation on the site. After a Division inspection in August 2012, the Division concluded that some more reclamation work was required. For example, a slope needs to be pushed down to minimize erosion and assist revegetation and the seed bed preparation for the site was inadequate and needs some more work to promote revegetation. On September 5, 2012, the Division sent a letter with this information to Nephi Sandstone.

16. In May 2014, the Division spoke with Bruce Evans with Nephi Sandstone and reminded him of what reclamation was required before the surety bond could be released.

B. The cancellation of the surety bond and the issuance of a cessation order

17. In July 2014, Travelers notified the Division that it was cancelling the surety bond. After the Division informed the company of when the first day the contract could be effectively canceled and Travelers amended its notice, the surety bond terminated on October 12, 2014.

18. The Division sent a letter on July 29, 2014 to Bruce Evans and Nephi Sandstone informing them of the bond cancellation and of Nephi Sandstone's obligation under its reclamation contract to provide a replacement surety bond by September 12, 2014. Stephanie Jarrett accepted delivery of the certified letter on August 5, 2014.

19. To date, the Division has not received any response from Nephi Sandstone on whether or when a new surety bond will be forthcoming. Accordingly, the Division issued a cessation order (MC2014-42-08) requiring a renewed surety or complete reclamation by October 11, 2014.

20. The Division has discovered through Travelers that the reason the surety bond was cancelled was because Nephi Sandstone has attempted to convey its permit to another company, Christensen Brothers Rock Product of Fairview, Utah. The Division received an application from this other company and have not been able to get Nephi Sandstone to provide more information about the possible transfer. After multiple unsuccessful attempts to reach out to Nephi Sandstone to resolve these issues, the Division believes it is best to seek a forfeiture and permission to reclaim the mine.

21. Although the surety bond expired on October 12, 2014, Travelers Casualty and Surety is still fully liable for all reclamation obligations of Nephi Sandstone incurred before that date. Therefore, unless the surety company or Nephi Sandstone reclaim the land, the Division will be forced to do the work.

Request for Action

Therefore Division asks the Board to take the following actions:

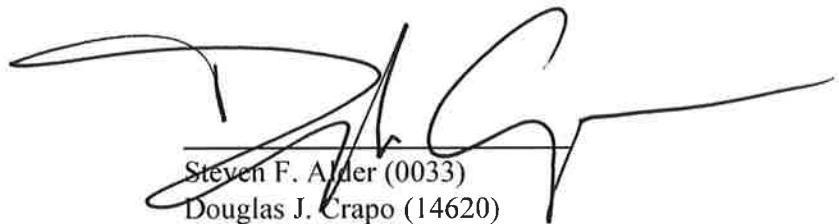
1. Withdraw approval of the Notice of Intention to Commence Large Mining Operations under subsection 40-8-16(2) of the Utah Code;
2. forfeit, under subsection 40-8-14(6) of the Utah Code, surety bond number 103926894 held by Travelers Casualty and Insurance Company of America, which is for the benefit of the Division, and order Travelers Casualty and Surety Company of America to deliver the principle of \$30,000 to the Division at the address below to pay for the costs associated with reclaiming the Cedar Springs site;

3. authorize the Division to reclaim the lands affected at the Cedar Springs mine under Utah Administrative Code Rule R647-3-112(1);

4. request that the Division and the Attorney General, under subsections 40-8-9.1(4), (6) of the Utah Code, take all necessary actions—including filing a civil action—to collect all outstanding annual fees, and those reclamation costs greater than the surety bond might cover; and

5. grant any other just and equitable relief in these circumstances.

RESPECTFULLY SUBMITTED this 20th day of October, 2014.



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CERTIFICATE OF MAILING

I certify that I caused a true and correct copy of the above Notice of Agency Action to be delivered the 21st day of October, 2014, to:

by email:

Michael S. Johnson
Assistant Attorney General
Utah Board of Oil, Gas and Mining
1594 West North Temple, Suite 300
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by U.S. Postal Service mail:

Nephi Sandstone Corporation
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Nephi Sandstone Corporation
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Bureau of Land Management
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A handwritten signature in blue ink, reading "Julie Ann Carter", is written over a horizontal line.